

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|-------------------|---|-------------------------------------|
| GERALD HEIDINGER, |) | No. C 06-0506 MMC (PR) |
| |) | |
| Petitioner, |) | ORDER OF DISMISSAL; GRANTING |
| |) | LEAVE TO PROCEED IN FORMA |
| v. |) | PAUPERIS |
| |) | |
| JAMES A. YATES, |) | |
| |) | (Docket No. 3) |
| Respondent. |) | |
| _____ |) | |

The instant action was opened when petitioner filed a document titled "Petitioner's Request for the Court to Toll; Hold the Time Limit for Filing of Federal Petition for Writ of Habeas Corpus in Abeyance," in which petitioner seeks to toll the running of the statute of limitations for a federal habeas petition he wishes to file in the future.

Article III, Section 2 of the United States Constitution restricts adjudication in federal courts to "Cases" and "Controversies." See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). In the absence of an actual petition for a writ of habeas corpus or other civil complaint, there is no case or controversy for this Court to adjudicate. See Green v. United States, 260 F.3d 78, 82 (2d Cir. 2001). Although, in some instances, a motion may be construed to be a petition for a writ of habeas corpus, see id. at 83-84, petitioner here has not alleged any grounds for such relief, and indeed it is clear that he is not asking for relief from his conviction, but rather from the

1 statute of limitations.¹ Moreover, the Court cannot discern from the instant filing whether
2 petitioner can meet even the most basic requirements for proceeding with a habeas petition in
3 federal court and, in particular, in the Northern District, such as proper jurisdiction and
4 venue. Consequently, the motion will not be construed as a habeas petition.

5 Accordingly, the above-titled action is hereby DISMISSED without prejudice to
6 petitioner's filing a petition for a writ of habeas corpus or a complaint for other relief.


7 In light of petitioner's lack of funds, the application to proceed in forma pauperis is
8 hereby GRANTED.

9 This order terminates Docket No. 3.

10 The Clerk shall close the file.

11 IT IS SO ORDERED.

12 DATED: May 15, 2006

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14 MAXINE M. CHESNEY
United States District Judge

27 ¹At such time as he files a petition for a writ of habeas corpus, petitioner may, of
28 course, raise any applicable grounds for relief from the statute of limitations.